

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

ADVANCED AERODYNAMICS, LLC,

Plaintiff,

v.

SPIN MASTER, LTD.,

Defendant.

CIVIL ACTION NO. 6:21-cv-00002-ADA

[PROPOSED] SCHEDULING ORDER

Pursuant to the Order Governing Proceedings for Patent Cases (OGP version 3.3), the Court hereby **ORDERS** that the following schedule will govern deadlines up to and including the trial of this matter:

Date	Item
Thursday, May 13, 2021	Plaintiff serves preliminary ¹ infringement contentions in the form of a chart setting forth where in the accused product(s) each element of the asserted claim(s) are found. Plaintiff shall also identify the earliest priority date (<i>i.e.</i> the earliest date of invention) for each asserted claim and produce: (1) all documents evidencing conception and reduction to practice for each claimed invention, and (2) a copy of the file history for each patent in suit.
Thursday, May 27, 2021	The Parties shall submit an agreed Scheduling Order. If the parties cannot agree, the parties shall submit a separate Joint Motion for entry of each Order briefly setting forth their respective positions on items where they cannot agree. Absent agreement of the parties, the Plaintiff shall be responsible for the timely submission of this and other Joint filings.

¹ The parties may amend preliminary infringement contentions and preliminary invalidity contentions without leave of court so long as counsel certifies that it undertook reasonable efforts to prepare its preliminary contentions and the amendment is based on material identified after those preliminary contentions were served, and should do so seasonably upon identifying any such material. Any amendment to add patent claims requires leave of court so that the Court can address any scheduling issues.

Date	Item
Thursday, July 1, 2021	Defendant serves preliminary invalidity contentions in the form of (1) a chart setting forth where in the prior art references each element of the asserted claim(s) are found, (2) an identification of any limitations the Defendant contends are indefinite or lack written description under section 112, and (3) an identification of any claims the Defendant contends are directed to ineligible subject matter under section 101. Defendant shall also produce (1) all prior art referenced in the invalidity contentions, (2) technical documents, including software where applicable, sufficient to show the operation of the accused product(s), and (3) summary, annual sales information for the accused product(s) for the two years preceding the filing of the Complaint, unless the parties agree to some other timeframe.
Thursday, July 15, 2021	Parties exchange claim terms for construction.
Thursday, July 29, 2021	Parties exchange proposed claim constructions.
Thursday, August 5, 2021	Parties disclose extrinsic evidence. The parties shall disclose any extrinsic evidence, including the identity of any expert witness they may rely upon with respect to claim construction or indefiniteness. With respect to any expert identified, the parties shall also provide a summary of the witness's expected testimony. ² With respect to items of extrinsic evidence, the parties shall identify each such item by production number or produce a copy of any such item if not previously produced.
Thursday, August 12, 2021	Deadline to meet and confer to narrow terms in dispute and exchange revised list of terms/constructions.
Thursday, August 19, 2021	Plaintiff files Opening claim construction brief. However, if Defendant contends multiple terms are indefinite and/or proposes numerous terms the Plaintiff contends require no construction, the parties may contact chambers as to whether it is more appropriate for Defendant to file the opening claim construction brief. Briefing shall include any arguments that any claim terms are indefinite.

² Any party may utilize a rebuttal expert in response to a brief where expert testimony is relied upon by the other party.

Date	Item
Thursday, September 9, 2021	Deadline for Responsive claim construction brief.
Thursday, September 23, 2021	Deadline for Reply claim construction brief.
Thursday, October 7, 2021	Deadline for Sur-Reply claim construction brief.
Tuesday, October 12, 2021	Parties submit Joint Claim Construction Statement. For Markman briefs ³ , each party shall deliver to Chambers one (1) paper copy of its Opening, Response, and Reply briefs, omitting attachments, at least 10 days before the hearing. Each party shall also provide an electronic copy of the briefs, exhibits, and the optional technology tutorial via cloud storage ⁴ or USB drive. For <i>Markman</i> briefs, the parties should also include a (1) paper copy of all patents-in-suit and the Joint Claim Construction Statement. To the extent the Court appoints a technical adviser, each party shall deliver the same to the technical adviser, also 10 days before the hearing.

³ But if the Court appoints a technical adviser for claim construction, the parties do not need to provide a copy of the Markman briefs to the Court.

⁴ The parties should contact the law clerk to request a Box link so that the party can directly upload the files to the Court's Box account. The filenames for any exhibits should be a description of the exhibit, *e.g.*, "U.S. Patent No. 10,000,000" or "Prosecution history for 10000,000 (January 20, 2020, Office Action)."

Date	Item
Friday, October 8, 2021	Parties submit optional technical tutorials to the Court and technical adviser (if appointed). ⁵ The parties shall also jointly submit, via USB drive, Box (not another cloud storage), or email to the law clerk, pdf versions of all as-filed briefing and exhibits.
Wednesday, October 20, 2021	<i>Markman</i> Hearing at 9:30 a.m.
Thursday, October 21, 2021	Fact Discovery opens; deadline to serve Initial Disclosures per Rule 26(a).
Wednesday, December 1, 2021	Deadline to add parties.
Wednesday, December 15, 2021	Deadline to serve Final Infringement and Invalidity Contentions. After this date, leave of Court is required for any amendment to Infringement or Invalidity contentions. This deadline does not relieve the Parties of their obligation to seasonably amend if new information is identified after initial contentions.

⁵ The parties should contact the law clerk to request a Box link so that the party can directly upload the file to the Court's Box account.

Date	Item
Wednesday, February 9, 2022	Deadline to amend pleadings. A motion is not required unless the amendment adds patents or patent claims. (Note: This includes amendments in response to a 12(c) motion.)
Wednesday, April 20, 2022	Deadline for the first of two meet and confers to discuss significantly narrowing the number of claims asserted and prior art references at issue. Unless the parties agree to the narrowing, they are ordered to contact the Court's Law Clerk to arrange a teleconference with the Court to resolve the disputed issues.
Wednesday, May 18, 2022	Close of Fact Discovery.
Wednesday, June 1, 2022	Opening Expert Reports.
Wednesday, June 29, 2022	Rebuttal Expert Reports.
Wednesday, July 20, 2022	Close of Expert Discovery.

Date	Item
Wednesday, July 20, 2022	Deadline for the second of two meet and confer to discuss narrowing the number of claims asserted and prior art references at issue to triable limits. To the extent it helps the parties determine these limits, the parties are encouraged to contact the Court's Law Clerk for an estimate of the amount of trial time anticipated per side. The parties shall file a Joint Report within 5 business days regarding the results of the meet and confer.
Wednesday, August 3, 2022	Dispositive motion deadline and Daubert motion deadline. Parties submit Joint Claim Construction Statement. For <i>Markman</i> briefs ⁶ , summary judgment motions, and <i>Daubert</i> motions, each party shall deliver to Chambers one (1) paper copy of its Opening, Response, and Reply briefs, omitting attachments, at least 10 days before the hearing. Each party shall also provide an electronic copy of the briefs, exhibits, and the optional technology tutorial via cloud storage ⁷ or USB drive. For <i>Markman</i> briefs, the parties should also include a (1) paper copy of all patents-in-suit and the Joint Claim Construction Statement. To the extent the Court appoints a technical adviser, each party shall deliver the same to the technical adviser, also 10 days before the hearing.
Wednesday, August 24, 2022	Serve Pretrial Disclosures (jury instructions, exhibits lists, witness lists, discovery and deposition designations).
Wednesday, September 7, 2022	Serve objections to pretrial disclosures/rebuttal disclosures.

⁶ But if the Court appoints a technical adviser for claim construction, the parties do not need to provide a copy of the *Markman* briefs to the Court.

⁷ The parties should contact the law clerk to request a Box link so that the party can directly upload the files to the Court's Box account. The filenames for any exhibits should be a description of the exhibit, e.g., "U.S. Patent No. 10,000,000" or "Prosecution history for 10000,000 (January 20, 2020, Office Action)."

Date	Item
Wednesday, September 14, 2022	Serve objections to rebuttal disclosures and File Motions <i>in limine</i> .
Wednesday, September 21, 2022	File Joint Pretrial Order and Pretrial Submissions (jury instructions, exhibits lists, witness lists, discovery and deposition designations); file oppositions to motions in limine
Wednesday, September 28, 2022	<p>File Notice of Request for Daily Transcript or Real Time Reporting. If a daily transcript or real time reporting of court proceedings is requested for trial, the party or parties making said request shall file a notice with the Court and e-mail the Court Reporter, Kristie Davis at kmdaviscsr@yahoo.com</p> <p>Deadline to meet and confer regarding remaining objections and disputes on motions in limine.</p> <p>Deadline to meet and confer regarding remaining objections and disputes on motions in limine.</p>
Friday, October 14, 2022	File joint notice identifying remaining objections to pretrial disclosures and disputes on motions in limine.
Wednesday, October 26, 2022	Final Pretrial Conference. The Court expects to set this date at the conclusion of the <i>Markman</i> Hearing.

Date	Item
Monday, November 14, 2022	Jury Selection/Trial. The Court expects to set these dates at the conclusion of the <i>Markman</i> Hearing.

SIGNED this _____ day of _____, 2021.

ALAN D. ALBRIGHT
UNITED STATES DISTRICT JUDGE

Dated: May 27, 2021

Respectfully submitted,

By: /s/ James F. McDonough, III

HENINGER GARRISON DAVIS, LLC

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ATTORNEYS FOR PLAINTIFF ADVANCED AERODYNAMICS, LLC

* admitted to the Western District of Texas

** admitted *Pro Hac Vice*

Dated: May 27, 2021

Respectfully submitted,

/s/ William Meunier

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Counsel for Defendant Spin Master, Ltd.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served on May 27, 2021 to all counsel of record who are deemed to have consented to electronic service *via* the Court's CM/ECF system.

By: */s/ James F. McDonough, III*
James F. McDonough, III